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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/833,506	04/07/1997	ROBERT WEBBER	12842	2615

7590 04/08/2002

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EXAMINER:

HUFF, SHEELA JITENDRA

ART UNIT	PAPER NUMBER
1642	<span style="border: 1px solid black; display: inline-block; width: 150px; height: 1.2em; vertical-align: middle; text-align: center;">33</span>

DATE MAILED: 04/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	08/833,506	WEBBER, ROBERT
	Examiner Sheela J Huff	Art Unit 1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 19 February 2002.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 42-61 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 42-61 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Response to Amendment***

#### ***Continued Prosecution Application***

The request filed on 2/19/02 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/833506 is acceptable and a CPA has been established. An action on the CPA follows.

The double patenting rejection over 08/634332 is withdrawn in view of the abandonment of said application.

### ***Claim Objections***

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

The last pending claim before the amendment filed 2/19/02 was entered was 41. The amendment filed 2/19/02 requested the addition of claims 41-60. Since claim 41 was already pending, newly added claims 41-60 been renumbered as claims 42-61. Claims 42-61 are pending.

### ***Sequence listing***

On page 32 the sequence at region 25-42 needs a SEQ ID No.

*v2-81* **Claim Rejections - 35 USC § 112**

Claims 42-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. In claims 42-43, and 49, the terminology "regions of human iNOS" renders the claim vague and indefinite. What does applicant mean by "regions"? How many amino acids are there in a "region"?

*v3*  
b. In claim 43, what does applicant mean by "polymers as artificial antibodies" and "phage display binding sites"? Polymers are polymers (organic compounds) not antibodies,

*(69)*  
c. In claim 49 it is not clear what applicant means by "mimics".

*(62)*  
d. In claim 42, line 1 "a analysis sample" should be --analysis of a sample--.

*(64-65 7)*  
e. In claims 44-45 and 51, the third sequence needs a SEQ ID No.

*(64-65 7)*  
f. In claims 44-45 and 51, SEQ ID No 26 and 29 are the same--is this correct?

g. In claims 54-54 the term "revealing" is vague and indefinite. How is it "revealed"?

Does applicant mean --detecting--?

The amendments filed 2/19/02 have been considered. The amendments did not address the above issues.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 42-43, 46-48 and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 94/23038 (Moncada et al ) or Kobzik et al Am. J. Respir. Cell Mol. Biol. vol. 9 p. 371 (1993) or Fujisawa et al J. Neurochemistry vol. 64 p. 85 (1995). The reasons for this rejection are as applied to claims 1-7, 12, 18 and 21 in paper no. 5, mailed 5/8/98.

Applicant did not indicate how the amendments to the claims overcome this rejection.

Claims 42, 46-48 and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Ikeda Tojo Medical Journal vol. 65 p. 433 (6/95). The reasons for this rejection are as applied to claims 1, 4-7, 12, 18 and 21 in paper no. 5, mailed 5/8/98.

Applicant did not indicate how the amendments to the claims overcome this rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating

obviousness or nonobviousness.

Claims 42-43, 46-48 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikeda Tojo Medical Journal vol. 65 p. 433 (6/95) or Kobzik et al Am. J. Respir. Cell Mol. Biol. vol. 9 p. 371 (1993) or Fujisawa et al J. Neurochemistry vol. 64 p. 85 (1995). The reasons for this rejection are as applied to claims 1-2, 4-7, 12, 18 and 21 in paper no. 5, mailed 5/8/98.

Applicant did not indicate how the amendments to the claims overcome this rejection.

***New Grounds of Rejection***

***Claim Rejections - 35 USC § 112***

Claims 54 and 55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terminology "said step of revealing" does not have proper antecedent basis.

***Conclusion***

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheela J. Huff whose telephone number is (703) 305-7866. The Examiner can normally be reached on Monday and Thursday from 5:30am to 2:00pm.

If attempts to teach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Tony Caputa, can be reached on (703)308-3995.

The FAX phone number for the group is (703)308-4242.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [anthony.caputa@uspto.gov].

All Internet e-mail communications will be made of record in the application file. **PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122.** This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-0196.

Sjh  
4/8/02

*Sheela J. Huff*  
Sheela J. Huff  
Primary Examiner